

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMAZON.COM, INC., et al.,

Plaintiffs,

v.

JIANSHUI XIE, an individual, a/k/a  
JIANSHUI XEI, et al.,

Defendant.

CASE NO. C22-1183 MJP

ORDER GRANTING MOTION  
FOR DEFAULT JUDGMENT

This matter comes before the Court on Plaintiffs' Motion for Default Judgment and Permanent Injunction. (Dkt. No. 48.) Having reviewed Plaintiffs' Motion and all supporting materials, the Court GRANTS the Motion, ENTERS default judgment against Defendant, and PERMANENTLY ENJOINS Defendant on the terms set forth in this Order.

**BACKGROUND**

Plaintiff King Technology, Inc. develops, markets, and sells water-treatment and sanitation products, with the use of nine different registered trademarks (which the Court refers

1 to as the “Frog” or “King” trademarks). (First Amended Complaint ¶ 4 (Dkt. No. 24).) Along  
2 with Plaintiffs Amazon.com, Inc. and Amazon.com Services LLC (together “Amazon”), King  
3 alleges that Defendant Jianshui Xie sold counterfeit Frog-branded products through Amazon’s  
4 webstore. (Id. ¶¶ 5-6.) Plaintiffs aver through a variety of Amazon seller accounts, Xie sold  
5 \$190,384 worth of counterfeit King products through Amazon’s store between July 2021 through  
6 March 2022. (Declaration of Elaine Haskel ¶¶ 3 (Dkt. No. 51).) Amazon refunded \$132,986 to  
7 customers who made purchases of counterfeit King goods sold by Xie. (Id. ¶ 7.)

8 Plaintiffs pursue the following claims: (1) King alone pursues a trademark infringement  
9 and counterfeiting claim pursuant to 15 U.S.C. § 1114 (FAC ¶¶ 47-53); (2) all Plaintiffs pursue  
10 false designation of origin claims pursuant to 15 U.S.C. § 1125(a) (FAC ¶¶ 54-70); (3) all  
11 Plaintiffs pursue Washington Consumer Protection Act claims (FAC ¶¶ 71-75); and (4)  
12 Amazon.com Services LLC alone pursues a breach of contract claim (FAC ¶¶ 76-82).

13 In addition to the allegations in the Amended Complaint, which the Court accepts as true,  
14 a King representative states that King reviewed a sample of the Frog-branded products from the  
15 selling accounts associated with Xie that had been shipped to Amazon for sale in the  
16 Amazon.com store. (Declaration of Katelyn Ward ¶¶ 5-8 (Dkt. No. 52).) King determined that  
17 these samples bore the King trademarks identified in the First Amended Complaint, but were  
18 counterfeit. (Id.) The King representative “believes that [Xie’s] misuse of the King Technology  
19 Trademarks deceived customers into believing that they were buying authentic King Technology  
20 products when the goods were actually counterfeit.” (Id. ¶ 9.) The King representative also states  
21 that “[b]y selling counterfeit King Technology FROG-branded products, [Xie] diverted  
22 legitimate sales that would have otherwise been made by King Technology” and that this  
23 damaged King’s reputation and goodwill. (Id.)  
24

1 Plaintiffs have served Defendant and obtained entry of default. (Dkt. Nos. 35, 37.)

2 Plaintiffs now move for default judgment and entry of a permanent injunction. (Dkt. No. 48.)

### 3 ANALYSIS

#### 4 A. Legal Standard

5 The Court has discretion to default judgment. Fed. R. Civ. P. 55(b); see Alan Neuman  
6 Prods., Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir. 1988). “Factors which may be considered  
7 by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility  
8 of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of  
9 the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute  
10 concerning material facts; (6) whether the default was due to excusable neglect, and (7) the  
11 strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.”  
12 Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986). In performing this analysis, “the  
13 general rule is that well-pled allegations in the complaint regarding liability are deemed true.”  
14 Fair Hous. of Marin v. Combs, 285 F.3d 899, 906 (9th Cir. 2002) (quotation and citation  
15 omitted). And “[t]he district court is not required to make detailed findings of fact.” Id.

#### 16 B. Jurisdiction

17 Before entering default judgment, the Court must assure itself that it has subject matter  
18 jurisdiction and personal jurisdiction over Xie.

19 There is little doubt that the Court has subject matter jurisdiction over Plaintiffs’ claims.  
20 Plaintiffs brings claims under various federal laws, which fall within the Court’s original  
21 jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). And the Court has  
22 supplemental jurisdiction over Plaintiffs’ state-law claim pursuant to 28 U.S.C. § 1367(a).

1 The Court also finds that it has personal jurisdiction over Xie, who is a nonresident. First,  
2 Plaintiffs have alleged that Xie agreed to Amazon Services' Business Solutions Agreement,  
3 which required Xie to consent to jurisdiction in this Court for claims involving the misuse of  
4 intellectual property rights in the Amazon store. See Chan v. Soc'y Expeditions, Inc., 39 F.3d  
5 1398, 1406–07 (9th Cir. 1994); (FAC ¶¶ 9, 29-37 & Ex. B.). This alone satisfies the Court that it  
6 has personal jurisdiction. Second, the Court finds that it has personal jurisdiction due to Xie's  
7 purposeful direction of its activities in this forum, pursuant to Fed. R. Civ. P. 4(k)(2), the federal  
8 long-arm statute. (See FAC ¶ 13.) Under Rule 4(k)(2), personal jurisdiction may be established  
9 over a defendant if the claims arise under federal law and: "(A) the defendant is not subject to  
10 jurisdiction in any state's courts of general jurisdiction; and (B) exercising jurisdiction is  
11 consistent with the United States Constitution and laws." Fed. R. Civ. P. 4(k)(2). To measure  
12 whether the exercise of personal jurisdiction is consistent with the Constitution, the Court  
13 engages in a "due process analysis [that] is nearly identical to the traditional personal jurisdiction  
14 analysis with one significant difference: rather than considering contacts between the [defendant]  
15 and the forum state, we consider contacts with the nation as a whole." Lang Van, Inc. v. VNG  
16 Corp., 40 F.4th 1034, 1039 (9th Cir. 2022) (citation and quotation omitted). To satisfy due  
17 process in this context, Plaintiffs must demonstrate that: (1) the nonresident defendant has either  
18 purposefully directed his activities at the United States or purposefully availed himself of the  
19 privilege of conducting activities in the forum; (2) the claim arises out of or relates to the  
20 defendant's forum-related activities; and (3) the exercise of jurisdiction comports with fair play  
21 and substantial justice. Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir.  
22 2004). If Plaintiffs satisfy the first two elements, the burden shifts to Defendant to make a  
23 compelling case that the exercise of jurisdiction would not be reasonable. Id. To establish  
24

1 “purposeful direction,” the Court applies the three-part “effects” test from Calder v. Jones, 465  
2 U.S. 783 (1984), which requires that the defendant must have “(1) committed an intentional act,  
3 (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be  
4 suffered in the forum state.” Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1228 (9th  
5 Cir. 2011) (quotation and citation omitted).

6 The Court finds that Plaintiffs have satisfied the requisite elements of Rule 4(k)(2).  
7 Plaintiffs pursue claims under federal law against Xie, who is outside of any state court’s general  
8 jurisdiction. And the Court finds that the exercise of personal jurisdiction comports with the  
9 Constitution. The Court points to three factors supporting this latter finding.

10 First, Xie purposefully directed his activities at the United States. All three elements of  
11 the “effects” test are satisfied. One, Xie used his Amazon seller accounts to advertise the sale of  
12 the counterfeit King products. Two, Xie directed the counterfeit King products to consumers in  
13 the United States by using Amazon’s website, which targets American buyers. Three, it was  
14 foreseeable that Defendant’s marketing and sales of the counterfeit King products would harm  
15 Amazon in the United States, where it is headquartered.

16 Second, Plaintiffs’ claims arise out of Xie’s forum-based activities. The Ninth Circuit  
17 “relies on a ‘but for’ test to determine whether a particular claim arises out of forum-related  
18 activities and thereby satisfies the second requirement for specific jurisdiction. Ballard v.  
19 Savage, 65 F.3d 1495, 1500 (9th Cir. 1995). Plaintiffs have satisfied this by showing that their  
20 claims would not exist but-for Xie’s sale of counterfeit King products and his decision to target  
21 consumers in the United States.

22 Third, because Plaintiffs have satisfied the first two prongs of personal jurisdiction under  
23 Rule 4(k)(2), the burden shifts to Defendant to show personal jurisdiction is not reasonably  
24

exercised here. By failing to appear in this matter, Xie has conceded that the exercise is reasonable. But for the sake of completeness, the Court has considered this factor and finds that the exercise of personal jurisdiction is reasonable. The Court does so by balancing the following factors:

(1) the extent of a defendant's purposeful interjection; (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.

Rio Properties, Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1021 (9th Cir. 2002). The balance of these factors shows that the exercise of personal jurisdiction is reasonable. Xie purposefully directed his activities at the United States. There is no evidence of the burden on Xie in defending himself in this Court or conflicts with the sovereignty of a foreign state. The United States has an interest in making sure that Plaintiffs' valid intellectual property rights are protected and this forum can efficiently resolve the conflict. And Plaintiffs have an interest in obtaining convenient and effective relief in this Court where there are no alternative fora identified. Accordingly, the Court finds the exercise of personal jurisdiction to be reasonable.

### **C. Eitel Factors Favor Default Judgment**

The Court reviews the Eitel factors to assess whether default judgment should be entered and in what specific amounts. On balance, the seven Eitel factors weigh in favor of entry of default judgment in Plaintiffs' favor.

#### **1. Factor One: Prejudice to Plaintiffs**

Without entry of default judgment Plaintiffs will be prejudiced. Plaintiffs have attempted to litigate this case and vindicate their rights under federal and state law against Xie. Xie failed to appear or participate in this litigation despite being served through alternative means. Plaintiffs

face prejudice by not being able to obtain complete relief on their claims against Xies without entry of default judgment. This factor weighs in favor of granting default judgment.

## **2. Factors Two and Three: Merits of Plaintiffs' Claims and Sufficiency of the Amended Complaint**

Plaintiffs have demonstrated the merit of their claims and the sufficiency of the Amended Complaint. The Court reviews each claim.

### **a. Trademark Infringement**

To prevail on a trademark infringement claim, King must establish (1) a protected trademark and (2) the use of that trademark by a party accused of infringing on the trademark is likely to cause consumer confusion. See Levi Strauss & Co. v. Blue Bell, Inc., 778 F.2d 1352, 1354 (9th Cir. 1985). Federal registration of a mark provides prima facie evidence of the mark's validity and entitles the plaintiff to a strong presumption that the mark is protectable. See Yellow Cab Co. of Sacramento v. Yellow Cab of Elk Grove, Inc., 419 F.3d 925, 927-28 (9th Cir. 2005).

Accepting the allegations as true and reviewing the declaration from King's representative, the Court finds that King has proved its trademark infringement claim by demonstrating the following: (1) it owns the King Trademarks (FAC ¶ 4, Ex. A; Ward Decl. ¶ 3 & Ex. A); (2) it reviewed samples of products that Xie shipped to Amazon (FAC ¶¶ 38-39; Ward Decl. ¶¶ 5-8); and (3) it determined those products were counterfeit imitations of King-branded products that illegally bear the King Trademarks based on deviations from the authentic products' packaging and materials. (Id.) The Court finds entry of default on the claim proper.

### **b. False Designation of Origin Claims**

To prevail on their claims of false designation of origin, Plaintiffs must show Xie "(1) use[d] in commerce (2) any word, false designation of origin, false or misleading description, or representation of fact, which (3) is likely to cause confusion or misrepresents the characteristics

1 of his or another person’s goods or services.” Freecycle Network, Inc. v. Oey, 505 F.3d 898, 902  
 2 (9th Cir. 2007). Any person who believes they are likely to be damaged by such an act may sue.  
 3 15 U.S.C. § 1125(a); Lexmark Int’l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 131–  
 4 32 (2014).

5 Both King and Amazon have proved their false designation claims. Plaintiffs have shown  
 6 that Xie sold counterfeit imitations of King-branded products bearing the King trademarks. (FAC  
 7 ¶¶ 38-39; Ward Decl. ¶¶ 5-8.) This misuse of the trademarks was designed to deceive the public  
 8 as to the authenticity of the products Xie sold. (FAC ¶¶ 5-6, 51, 58.) And Xie’s use of the King  
 9 trademarks harmed its goodwill. (See FAC ¶¶ 3-7; Ward Decl. ¶ 9.) Similarly, Xie deceived  
 10 Amazon about the authenticity of the counterfeit products it was advertising, marketing, offering,  
 11 and selling through Amazon’s website. As alleged, this violated Amazon Service’s Seller  
 12 Agreement. (FAC ¶ 32, Ex. B.) And Xie’s use of Amazon’s website to sell its goods harmed  
 13 Amazon’s reputation and brand, and caused it to issue refunds. (FAC ¶¶ 2, 17-25, 65, 68; Haskel  
 14 Decl. ¶ 7.) The Court finds entry of default on these claims proper. The Court also notes that  
 15 Plaintiffs do not move for default judgment on their false advertising claims, which are therefore  
 16 not the subject of this Order. (See Mot. at 8 n.4.)

### 17 c. CPA Claim

18 To prevail on their CPA claim, Plaintiffs must establish “(1) an unfair or deceptive act or  
 19 practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a  
 20 person’s business or property, and (5) causation.” Panag v. Farmers Ins. Co. of Wash., 166  
 21 Wn.2d 27, 37 (2009) (citing Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105  
 22 Wn.2d 778, 784 (1986)). “[A] claim under the Washington CPA may be predicated upon a per se  
 23 violation of statute, an act or practice that has the capacity to deceive substantial portions of the  
 24

1 public, or an unfair or deceptive act or practice not regulated by statute but in violation of public  
2 interest.” Klem v. Wash. Mut. Bank, 176 Wn.2d 771, 787 (2013).

3 The Court agrees with Plaintiffs that they have stated a claim under the CPA. Xie’s sale  
4 of counterfeit products is an unfair and deceptive act that occurred in trade, affecting the public  
5 interest, and which has harmed Plaintiffs’ goodwill. The Court finds entry of default on this  
6 claim proper.

7 **d. Breach of Contract Claim**

8 To prevail on its breach of contract claim, Amazon Services must show the breach of a  
9 valid contract and damages proximately caused by the breach. Nw. Indep. Forest Mfrs. v. Dep’t  
10 of Lab. & Indus., 78 Wn. App. 707, 712 (1995). Amazon Services has here provided sufficient  
11 evidence of a valid and enforceable contract—the Business Solutions Agreement—that Xie has  
12 breached in a variety of ways through their sale of counterfeit goods. (FAC ¶¶ 29-37, 77, 81 &  
13 Ex. B.) And by paying refunds in the amount of \$132,986 for goods Xie sold in violation of the  
14 Agreement, Amazon Services has shown damages proximately caused by the breach. (See  
15 Haskel Decl. ¶ 7.) The Court finds entry of default on this claim proper.

16 **3. Factor Four: Sum of Money at Stake**

17 Amazon has determined that Xie had aggregate sales of \$190,384 in counterfeit King  
18 products. Given the size of the sales, this factor weighs in favor of default judgment.

19 **4. Factor Five: Possibility of Dispute of Material Facts**

20 The Court finds little possibility that the core, material facts are in dispute. Not only has  
21 Xie failed to appear in this action, but Plaintiffs have provided detailed evidence in support of  
22 their claims that is likely difficult to be rebutted. This factor favors entry of default judgment.  
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**5. Factor Six: Whether Default is Due to Excusable Neglect**

There is no evidence that Xie's failure to appear is due to excusable neglect. This factor favors entry of default judgment.

**6. Factor Seven; Strong Policy in Favor of Decision on the Merits**

The Court maintains a strong policy preference in favor of resolution of Plaintiffs' claims on the merits. But Xie's decision not to appear in this case vitiates against this policy. This factor weighs in favor of entry of default judgment.

\* \* \*

Having considered and balanced the Eitel factors, the Court finds that entry of default judgment is proper on all claims. On this basis, the Court GRANTS the Motion.

**D. Amount of the Default Judgment**

King asks the Court to award statutory damages against Xie for his willful and unauthorized use of the King's trademarks, and Amazon Services seeks damages on its breach of contract claim. (Mot. at 13-17.) Plaintiffs do not seek damages on their CPA claim. The Court reviews both requests.

King correctly notes they it may seek statutory damages between \$1,000 to \$2,000,000 per mark given that Xie's failure to defend this action constitute an admission their infringement of the two marks at issue was willful. (Mot. at 14 (citing 15 U.S.C. § 1117(c)(1); Derek Andrew, Inc. v. Poof Apparel Corp., 528 F.3d 696, 702 (9th Cir. 2008).) As such, King may seek statutory damages ranging between \$9,000 and \$18,000,000, given the nine marks at issue. See 15 U.S.C. § 1117(c)(1). King asks the Court to award statutory damages based on trebling the total sales of counterfeit King-branded products, for a total of \$571,152. (See Mot. at 13-15; Haskel Decl. ¶ 7.) The Court finds this damages request to be reasonable, in light of the nature of the deceptive

1 scheme, the scope of the sales, Xie's involvement, as well as the need for compensation,  
2 deterrence, and punishment. The Court therefore awards King damages in the amount sought.

3 The Court also finds Amazon's request for damages against Xie for the refunds it made  
4 to be reasonable and appropriate. The Court awards Amazon \$132,986 in damages. (See Haskel  
5 Decl. ¶ 7.)

6 **E. Injunctive Relief**

7 The Court finds it appropriate to enter a permanent injunction against Xie on the terms  
8 Plaintiffs request. "As a general rule, a permanent injunction will be granted when liability has  
9 been established and there is a threat of continuing violations." MAI Sys. Corp. v. Peak  
10 Computer, Inc., 991 F.2d 511, 520 (9th Cir. 1993). And the Lanham Act authorizes "the 'power  
11 to grant injunctions according to principles of equity and upon such terms as the court may deem  
12 reasonable, to prevent the violation of any right' of the trademark owner." Reno Air Racing  
13 Ass'n., Inc. v. McCord, 452 F.3d 1126, 1137 (9th Cir. 2006) (quoting 15 U.S.C. § 1116(a)).

14 A plaintiff seeking permanent injunctive relief must demonstrate: "(1) that it has suffered  
15 an irreparable injury; (2) that remedies available at law, such as monetary damages, are  
16 inadequate to compensate for that injury; (3) that, considering the balance of hardships between  
17 the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest  
18 would not be disserved by a permanent injunction." eBay, Inc. v. MercExchange, L.L.C., 547  
19 U.S. 388, 391 (2006).

20 The Court finds that all four eBay factors favor entry of a permanent injunction. First,  
21 based on the admitted allegations in the Amended Complaint, Xie's trademark infringement and  
22 violations of the CPA have caused irreparable harm to Plaintiffs' goodwill and reputation and  
23 have caused them to incur expenses to prevent further damage. Second, Plaintiffs have shown  
24

1 that monetary damages alone will not necessarily prevent Xie from engaging in further  
2 infringing conduct. Given Xie's decision not to appear in this case, there can be no assurances  
3 that they will no longer engage in the conduct at issue in this case. This satisfies the Court that  
4 monetary damages alone are insufficient. Third, the equities favor Plaintiffs, who seek to enjoin  
5 Xie from engaging in illegal conduct that benefits only him. This favors Plaintiffs and the  
6 requested injunction. Fourth, an injunction prohibiting Xie from engaging in further conduct that  
7 infringes on Plaintiffs' trademarks and violates the CPA will serve the public interest. The Court  
8 GRANTS the Motion and ENTERS the following PERMANENT INJUNCTION against Xie  
9 and each of his officers, agents, servants, employees, and attorneys, and all others in active  
10 concert or participation with him who receive actual notice of this Order from:

- 11 1. Selling counterfeit or infringing products in Amazon's stores;
- 12 2. Selling counterfeit or infringing products to Amazon or any Amazon affiliate;
- 13 3. Manufacturing, importing, distributing, offering to sell, or selling any product  
14 using King's brand or trademarks, or which otherwise infringes King's  
15 intellectual property, in any store or in any medium; and
- 16 4 Promoting or advertising through social media, or any other method or channel of  
17 communication, any product using the King's brand or trademarks without King's  
18 authorization;
- 19 5. Assisting, aiding, or abetting any other person or business entity in engaging in or  
20 performing any of the activities listed in (a) through (c) above.

21 The Court also retains jurisdiction over this case for the purpose of enforcing this Order  
22 and Injunction.  
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24

**CONCLUSION**

The Court finds that Plaintiffs are entitled to entry of default judgment in their favor and for an order enjoining Xie from further conduct that violates the Trademark laws and the CPA.

As explained above, the Court GRANTS the Motion for Default Judgment and PERMANENTLY ENJOINS Xie on the terms specified above. Plaintiffs' counsel is hereby directed to serve a copy of this Order and Injunction on Xie.

The clerk is ordered to provide copies of this order to all counsel.

Dated November 13, 2024.



Marsha J. Pechman  
United States Senior District Judge